

1 THE HONORABLE RICARDO S. MARTINEZ
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 UTHERVERSE GAMING LLC,

11 Plaintiff,

12 v.

13 EPIC GAMES, INC.,

14 Defendant.

15 Case No. 2:21-cv-00799-RSM

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28 **JOINT STIPULATION AS TO THE PARTIES'**
MOTIONS IN LIMINE
(CASE NO. 2:21-CV-00799-RSM)

JOINT STIPULATION AS TO THE PARTIES' MOTIONS IN LIMINE

Morrison & Foerster LLP, 425 Market Street,
San Francisco, CA, Tel: 415-268-7000

1 **WHEREAS**, Plaintiff Utherverse Gaming LLC (“Utherverse Gaming”) and Defendant
 2 Epic Games Inc. (“Epic”) (collectively, the “Parties”) have filed several motions *in limine*
 3 (“MIL(s)”). *See* Dkts. 408; 414;

4 **WHEREAS**, leading up to and following the filing of the MILs, the Parties have met and
 5 conferred numerous times, both telephonically and by email, to narrow the disputes raised in the
 6 Parties’ motions *in limine*;

7 **NOW, THEREFORE**, the Parties, by and through their undersigned counsel, hereby
 8 submit this joint stipulation substantially narrowing the scope of the pending MILs as follows:

9 1. Epic hereby withdraws its MIL No. 3, Dkt. 414 at 9-11, and Utherverse Gaming
 10 agrees not to introduce aggregated monthly, quarterly, or yearly *Fortnite* revenue, or top-line
 11 Epic revenue, or monetary figures ascribing a value to Epic as a whole. This agreement does not
 12 preclude Utherverse Gaming from introducing evidence of revenue and profits associated with
 13 *Fortnite* transactions surrounding the Accused Events, Epic’s internal aggregations, calculations,
 14 or estimations of revenue, profit, or other metrics attributable to the Accused Events, or valuation
 15 documents discussing the Accused Events, provided any top-line revenues or whole-company
 16 valuations are redacted or not included in excerpts.

17 2. Epic hereby withdraws its MIL No. 4, Dkt. 414 at 12-13, and Utherverse Gaming
 18 agrees not to make any argument or otherwise suggest that any *Fortnite* event other than the
 19 Travis Scott or Ariana Grande concerts infringe the ’605 patent.

20 3. Utherverse Gaming hereby withdraws its MIL No. 1, Dkt. 408 at 1-2, and Epic
 21 agrees not to make any reference to the industry or industries of the inventors’ pre-UDI / pre-
 22 IdeaFlood ventures to the extent those industries are related to the adult industry or otherwise
 23 prejudicial or inflammatory (this includes referring to company names, like Xpics, connecting
 24 them to the adult entertainment industry).

25 4. Utherverse Gaming hereby withdraws its MIL No. 2, Dkt. 408 at 2-3, and Epic
 26 agrees not to refer to Utherverse’s platform, or the Red Light Center, as pornography, or to
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1 improperly focus on the adult nature of the Red Light Center. Epic will be otherwise permitted
 2 to offer evidence concerning the Red Light Center.

3 5. Utherverse Gaming hereby withdraws its MIL No. 3, Dkt. 408 at 4, and Epic
 4 agrees not to refer to Utherverse Gaming, UDI, or the inventors using pejorative or derogatory
 5 terms for non-practicing entities such as “patent troll” or “patent pirate.”

6 6. Utherverse Gaming hereby withdraws its MIL No. 4, Dkt. 408 at 5-6, and Epic
 7 agrees not to introduce evidence concerning Fortress, investment funds managed by Fortress, or
 8 how Utherverse’s counsel is being compensated, except that Epic will be permitted to introduce
 9 evidence regarding the December 2020 PPLA, evidence about Utherverse Gaming’s business
 10 model and licensing history, and evidence regarding how the proceeds from any monetization
 11 event (including a judgement from this trial) would be distributed, if at all, to Utherverse Digital,
 12 Brian Shuster, or David Cohen. For the avoidance of doubt, the agreement to exclude evidence
 13 regarding Fortress and investment funds managed by Fortress means that Epic will not introduce
 14 evidence regarding any distribution of proceeds to investors in Utherverse Gaming’s parent
 15 company. Additionally, Epic reserves the right to introduce evidence concerning Fortress in the
 16 event Utherverse makes arguments about the relative sizes of Epic and Utherverse Gaming, or
 17 otherwise suggests a “David v. Goliath” dynamic during trial.

18 7. Utherverse Gaming hereby withdraws its MIL No. 9, Dkt. 408 at 12, and the
 19 parties both agree not to reference the stipulated judgment of non-infringement of the ’954 and
 20 ’157 patents.

21 8. Utherverse Gaming hereby withdraws its MIL No. 10, Dkt. 408 at 12-13, and the
 22 parties both agree not to reference the Court’s summary judgment rulings.

23 9. Both parties agree that neither party will seek to introduce evidence of, or elicit
 24 testimony regarding, any U.S. or foreign governmental or regulatory complaint or investigation
 25 or the resolution of any such complaint or investigation (including, without limitation, those
 26 involving the Federal Trade Commission).

1 Dated: September 10, 2024

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1 Dated: September 10, 2024

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23 *Attorneys for Defendant Epic Games, Inc.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 10, 2024 the within document was filed with the Clerk
3 of the Court using CM/ECF which will send notification of such filing to the attorneys of record
4 in this case.

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/s/ Eric C. Wiener
6 ERIC C. WIENER